

### **REMARKS**

The Office action dated November 25, 2009, and the references cited have been fully considered. In response, please enter the amendments and consider the remarks presented herein. Reconsideration and/or further prosecution of the application is respectfully requested.

Applicants appreciate the thoughtful examination of the application, including the Office reopening prosecution in light of Applicants' previous appeal.

Applicants have amended each of the claims to conform to a prevalent definition of apparatus - An appliance or device for a particular purpose<sup>1</sup>. An example of a device is a computer, networked router, packet switching device, but not a network of multiple computers, networked routers or packet switching devices. Support for these amendments is provided at least by the original claims themselves, the common definition of an apparatus, and page 8, lines 11-12 which states, *inter alia*, that one device may comprise an embodiment. Applicants have amended each of the claims to recite a device, rather than merely arguing that an apparatus is limited to a device based on its common definition. Further, Applicants have amended each of the independent claims to recite within the body of the claims that elements are within the device in order to explicitly give life and breadth to the limitation of "device," in order to ensure that it is not arguable that the limitation of device is only in preamble and should not be considered when construing the claim. (Although, Applicants would argue that even if the word "device" is only in the preamble, it is limiting as it gives the claim structure and therefore is a limitation when properly construing the claim, *see*, MPEP §2111.02(I).)

In terms of the rejections of the claims based on prior art, all claim rejections rely on the teachings of Finn et al., with the Office action equating different network nodes to different recited elements. As all claims as amended are expressly limited to a single device including the

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recited elements, Applicants respectfully submit that the teachings of Finn et al. are irrelevant to the claims as amended, and therefore do not establish a *prima facie* rejection of the any of the claims as amended to clarify the definition of an apparatus. In contrast to the recited limitations of the claims, Finn et al. is directed at protection switching in a network of multiple network nodes and as applied to the claims in the Office action, different network nodes are equated to different recited elements within the claims. It would be improper to modify Finn et al. to change its principle of operation of a network of network nodes to be a single node. *See*, MPEP § 2143.01(V) citing *In re Gordon*, MPEP § 2143.01(VI) citing *In re Ratti*.

For at least these reasons, Applicants respectfully submit that the claimed approach of protection switching using detectors and protectors within a single device is patentably distinct from that recited in each of the pending amended claims. For at least these reasons, Applicants respectfully request all claim rejections be withdrawn, all claims be allowed, and the application be passed to issuance.

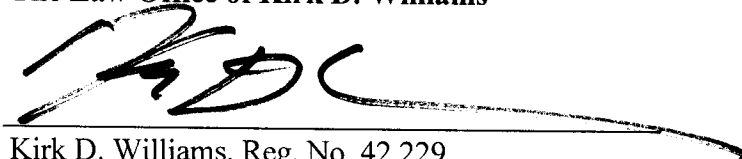
**Final Remarks.** In view of the above remarks and for at least the reasons presented herein, all pending claims are believed to be allowable over all prior art of record, the application is considered in good and proper form for allowance, and the Office is respectfully requested to issue a timely Notice of allowance in this case. Applicants request any and all rejections and/or objections and/or restriction requirements be withdrawn. If, in the opinion of the Office, a telephone conference would expedite the prosecution of the subject application, the Office is invited to call the undersigned attorney, as Applicants are open to discussing, considering, and resolving issues.

Applicants request a two-month extension of time. Should a different extension of time be deemed appropriate, Applicants hereby petition for such deemed extension of time. The Commissioner is authorized to charge (or credit any overpayment to) Deposit Account No. 501430 for any fees that may be due in connection with this paper (e.g., claim fees, extension of time fees) in addition to any payment made herewith using EFS-Web.

Respectfully submitted,  
**The Law Office of Kirk D. Williams**

Date: April 26, 2010

By



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